U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: SRC-98-027-51710 Office: Texas Service Center Date: AUG 15 2000

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as the treasurer and music leader. The director denied the petition determining that the petitioner had failed to establish that a qualifying job offer had been made. The director also found that the petitioner had failed to establish it had the ability to pay a wage.

On appeal, the petitioner disputes the findings of the director.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
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> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
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> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioner has put forth a qualifying job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In its letter dated September 15, 1997, the petitioner stated that "any salary will be pertinent to [the beneficiary's] obligations. All of his time and labor has been on a voluntary performance." On December 4, 1997, the director requested that the petitioner provide the terms of payment or remuneration. In response, the petitioner submitted a photocopy of its September 15, 1997 letter.

On appeal, the petitioner states that it "has approved of a job allowance on April 01, 1998 for [the beneficiary] of $16,000.00 per year in a non monetary allowance but includes and not limited to room & board." The petitioner has not satisfied the requirements at 8 C.F.R. 204.5(m)(4). The petitioner has not provided any specific terms of payment or remuneration. It is not clear what the petitioner's definition of "non monetary allowance" is, and this cannot be considered to equate with a valid job offer. Moreover, as the beneficiary has been performing his duties at the petitioner's organization on a voluntary basis, it is not evidence that the petitioner now requires the beneficiary's services on a salaried basis. Thus, it has not been established that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support. Accordingly, the petitioner has failed to establish that a job offer has been made in accordance with 8 C.F.R. 204.5(m)(4).

The next issue to be examined is whether the petitioner has the ability to pay a wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

On December 4, 1997, the director requested that the petitioner submit evidence of its ability to pay a wage. In response, the petitioner submitted a self-prepared financial statement for 1998. On appeal, the petitioner indicates that it has the ability to pay the beneficiary a salary. The evidence submitted in support of this petition does not support the petitioner's assertion. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has not established that the prospective occupation is a traditional religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary has two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1). Also, the petitioner has failed to establish that it is a qualifying, non-profit religious organization as required at 8 C.F.R. 204.5(m)(3) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.